

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:11CR127
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
JOSE LUIS RIVERA,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 96). The government adopted the PSR (Filing No. 93). The Defendant filed a motion for downward departure and a supporting brief (Filing Nos. 97, 98). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the assessment of two points in ¶ 40 for a juvenile offense. The Defendant requests the opportunity to present oral testimony at sentencing, and he has attached documents to the statement of objections to the PSR.¹ The Court will hear the objection at sentencing, and the request to present oral testimony at sentencing is granted.

The Court will also hear the Defendant's motion for downward departure at sentencing. However, the Defendant is cautioned that a reduction to one criminal history

¹The Defendant is advised that NECrimR 12.3(b)(2) and 49.2(a)(2) describe the way in which evidence must be filed. Specifically, evidence shall not be attached to a motion or brief. Moreover, the Court has directed the Clerk to restrict the documents attached to the Defendant's Statement (Filing No. 96), as they contain juvenile court records.

point due to a downward departure does not allow the Defendant the opportunity to receive the protection of the safety valve. *United States v. Barrera*, 562 F.3d 899, 903 (8th Cir. 2009).

IT IS ORDERED:

1. The Defendant's objection to ¶ 40 of the PSR will be heard at sentencing;
2. The Defendant's request to present oral testimony at sentencing is granted;
3. If the entire sentencing hearing cannot be completed within thirty (30) minutes, both counsel must immediately contact the courtroom deputy, Marian Frahm, and reschedule the hearing;
4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
5. Absent submission of the information required by paragraph 4 of this Order, my tentative findings may become final;
6. The Defendant's motion for downward departure (Filing No. 97) will be heard at sentencing; and
7. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 12th day of December, 2011.

BY THE COURT:

s/ Laurie Smith Camp
United States District Judge